

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH MARZULLO,

Plaintiff,

- against -

CONCORD MUSIC GROUP, INC.,

Defendant.

Docket No. 19-cv-00216

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Joseph Marzullo (“Marzullo” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Concord Music Group, Inc. (“Concord” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of actress Rachel Bloom and actor Tony Yazbeck during rehearsals for the show *Crazy For You* (the “Photograph”), owned and registered by Marzullo, a New York based professional photographer. Accordingly, Marzullo seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides with a principal place of business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Marzullo is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 788 Amsterdam Avenue, Apt. 2S, New York, NY 10025.

6. Upon information and belief, Concord is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 229 West 28th St., 11th Floor, New York, New York 10001. Upon information and belief Concord is registered with the New York Department of State Division of Corporations to do business in the State of New York. At all times material, hereto, Concord has owned and operated a website at the URL: <http://www.tamswitmark.com> (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. In or around February, 2017 Marzullo photographed Rachel Bloom and Tony Yazbeck during rehearsals for the show *Crazy For You*. A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Marzullo is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-083-899.

B. Defendant’s Infringing Activities

10. Concord ran an article on the Website titled *NOW WHAT? A Teacher's Guide to Directing Musical Theatre Part 10 - TROUBLESHOOTING*. See URL

https://tamswitmark.com/blog_items/troubleshooting/. (The “Article”) The Article prominently featured the Photograph. A true and correct copy of the Article is attached hereto as Exhibit B.

11. Concord did not license the Photograph from Plaintiff for its article, nor did Concord have Plaintiff’s permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Concord infringed Plaintiff’s copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Concord is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff’s copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff’s rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff’s copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant’s profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Concord be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringements;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
January 8, 2019

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